From: California Ct App - Justia Daily Opinion Summaries
To: Kutches, Brandon (SHF)
Subject: Latest 10 Cases: Bravo v. RADC Enterprises, Inc. (Arbitration & Mediation), JPMorgan Chase Bank, N.A. v. Ward (Banking), Rel v. Pacific Bell ...
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March 30, 2019

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Legal Analysis and Commentary

Clarence Thomas Speaks—And Arguably Contradicts His Longstanding Views

MICHAEL C. DORF

verdict post

Cornell law professor Michael C. Dorf argues that the question Justice Clarence Thomas asked during oral argument in *Flowers v. Mississippi* potentially reflects a view inconsistent with one he and other conservative justices have strongly endorsed in the past. Dorf points out that Justice Thomas's question, regarding the race of jurors struck by the defense counsel, suggests that discrimination against one group can cancel out discrimination against another, which is directly at odds with his expressed view that the Constitution forbids all government consideration of race.

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California Courts of Appeal Opinions

Bravo v. RADC Enterprises, Inc.

Docket: B289506(Second Appellate District)
Opinion Date: March 29, 2019
Judge: Wiley
Areas of Law: Arbitration & Mediation

The choice-of-law clause in an arbitration agreement required that all individual claims must be arbitrated. Plaintiff filed suit against RADC on individual employment claims, as well as on representative claims under the Private Attorneys General Act of 2004 (PAGA). The trial court interpreted a choice-of-law clause in the parties' arbitration agreement and held that some, but not all, individual employment claims must be arbitrated. The Court of Appeal affirmed the part of trial court's order severing the agreement provision requiring the parties to arbitrate the PAGA claims; affirmed the order granting RADC's motion as to three individual claims; but reversed the order denying the motion as to the remaining six individual claims. As to the six claims, the court held that RADC rightly concluded that the trial court should have sent all of plaintiff's individual claims to arbitration.

Read Opinion Are you a lawyer? **Annotate this case**.

JPMorgan Chase Bank, N.A. v. Ward

Docket: D073378(Fourth Appellate District)
Opinion Date: March 28, 2019
Judge: Dato
Areas of Law: Banking, Civil Procedure, Real Estate & Property Law

Walter Ward took out a secured loan in 2007 without indicating whether he signed the deed of trust (DOT) conveying his property to the lender in his individual capacity or in his capacity as sole trustee of the trust in which his property was held. That DOT was never recorded. Years later, the lender's successor, JPMorgan Chase Bank, N.A. (Chase) asked for a replacement to foreclose. Walter refused, prompting Chase to sue. The trial court sustained two general demurrers to Chase's complaint, entered a judgment of dismissal, and awarded contractual attorney fees and costs to Walter's son, David Ward, the successor trustee of the trust that held the property. The issue this case presented for the Court of Appeal's review centered on

whether Chase could reframe its action by amendment to omit a fatal allegation in its original complaint. Because the Court conclude it could, notwithstanding the sham pleading doctrine, the court should have granted leave to amend. Accordingly, we reverse the judgment and the postjudgment order and direct the court to enter a new order sustaining the general demurrers with leave to amend.

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Rel v. Pacific Bell Mobile Services

Docket: A152225(First Appellate District)
Opinion Date: March 29, 2019
Judge: Burns
Areas of Law: Civil Procedure, Class Action

Tucker filed suit in December 2003, under the unfair competition law, challenging Cingular's marketing of mobile phone monthly rates. Plaintiff Hodge was added after Tucker lost standing. After several years of motions, discovery, and appellate proceedings, Hodge filed a fifth amended complaint in 2011. The trial court sustained a demurrer to the class allegations without leave to amend and sustained the demurrer to the individual fraud claims with leave to amend. Following a remand, the operative seventh amended complaint was filed in August 2013. Cingular successfully moved to strike the class claims, arguing Hodge had changed her plan and lacked standing. The court of appeal again remanded. The trial court then dismissed for failure to comply with Code of Civil Procedure section 583.310, which requires an action to "be brought to trial within five years after the action is commenced." Plaintiffs argued that the pretrial order dismissing the class claims qualified as a "trial" for purposes of section 583.310. In class action lawsuits, such a pretrial order is treated as a final judgment and is immediately appealable under the "death knell doctrine." The court of appeal affirmed the dismissal. A death knell order does not constitute a trial under the five-year dismissal statute and an appellate decision reversing such an order does not trigger the statute's three-year extension.

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Chen v. Berenjian

Docket: G055496(Fourth Appellate District)
Opinion Date: March 28, 2019
Judge: Richard D. Fybel
Areas of Law: Civil Procedure

After obtaining money judgments against Shazad Berenjian, Pang Yen Chen sued him and his brother Sharmad for fraudulent transfer under the Uniform Voidable Transactions Act (UVTA). Chen alleged Shazad and Sharmad had attempted to thwart Chen's attempts to execute on the judgments by colluding in a sham lawsuit, stipulating to a judgment, and allowing Sharmad to execute on the judgment. The trial court sustained a demurrer with leave to amend, but Chen allowed dismissal to be entered against him and pursued this appeal. The primary issue presented for the Court of Appeal's review was whether, on the face of Chen's complaint, the litigation privilege of Civil Code section 47(b) barred the cause of action for fraudulent transfer under the UVTA. The Court concluded the litigation privilege of section 47(b) did not bar the fraudulent transfer cause of action as alleged because the gravamen of that cause of action was the noncommunicative act of transferring assets by executing on a judgment. The Court therefore reversed.

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Mesa RHF Partners, LP v. City of Los Angeles

Dockets: B288355(Second Appellate District) , B288356(Second Appellate District)
Opinion Date: March 29, 2019
Judge: Victoria Gerrard Chaney
Areas of Law: Civil Procedure

The Court of Appeal affirmed the trial court's orders denying Mesa, Hill, and Olive's motions to enforce settlement agreements under Code of Civil Procedure section 664.6. Although the trial court denied the motions on the merits, the court held that the trial court lacked jurisdiction to hear the motions because Mesa, Hill, and Olive's requests for dismissal were not section 664.6 requests for the trial court to retain jurisdiction. In this case, the requests for dismissal were not signed by the "parties" as that term in

section 664.6 has been uniformly construed by California courts. The court noted that the parties could have easily invoked section 664.6 by filing a stipulation and proposed order either attaching a copy of the settlement agreement and requesting that the trial court retain jurisdiction under section 664.6 or a stipulation and proposed order signed by the parties noting the settlement and requesting that the trial court retain jurisdiction under section 664.6.

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California v. Weir

Docket: D073626(Fourth Appellate District)
Opinion Date: March 29, 2019
Judge: Patricia D. Benke
Areas of Law: Constitutional Law, Criminal Law

Zachary Weir was convicted on four counts of felony possession of personal identifying information. On appeal, Weir contended his felony convictions should have been classified as misdemeanors under Proposition 47's enactment of section 490.2 defining petty theft. The Court of Appeal determined this case required an interpretation of Penal Code section 530.5(c), and for a determination of whether a conviction under subsections (1) and (2) of this subdivision should be reduced to a misdemeanor under section 490.2's petty theft provision. The Court concluded section 530.5(c) was not subject to reclassification under Proposition 47 because section 490.2 only reclassified theft offenses. A violation of section 530.5(c) was a nontheft offense, and to conclude otherwise would be contrary to Proposition 47's intent.

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People v. Chamagua

Docket: B290057(Second Appellate District)
Opinion Date: March 29, 2019
Judge: Wiley
Areas of Law: Criminal Law

The Court of Appeal affirmed the trial court's denial of defendant's motion to suppress evidence, holding that a consensual encounter between a police officer and a citizen did not implicate the Fourth Amendment. The court held that a reasonable and innocent person in defendant's position would have felt free to go. In this case, the encounter with the deputies was consensual to the point where defendant admitted to having an illegal pipe. After defendant admitted he possessed illegal contraband, the officer had reasonable suspicion to detain and search him.

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In re C.W.

Docket: A152993(First Appellate District)
Opinion Date: March 29, 2019
Judge: Stewart
Areas of Law: Family Law, Juvenile Law

C.W. was born in 2002. His father, Rusty, moved to Louisiana and started a new family. Before Rusty left, the four-year-old daughter of a friend had accused him of sexual abuse. Rusty had practically no contact with C.W. In Louisiana, Rusty was arrested on aggravated rape charges and spent 10 months in jail. Rusty admitted having sexual intercourse with a third minor, claiming it had been consensual. C.W. entered the child dependency system at age 10. During a “trial home visit” with Rusty, C.W. deteriorated, experiencing trouble in school, conflict with his father, sexual misbehavior and trouble with the law. Rusty sent C.W. to live in a Louisiana children’s group home at the urging of local law enforcement officials. Meanwhile, in California, C.W.'s mother, Heather, had overcome homelessness and drug addiction and become gainfully employed. Heather sought C.W.’s return. The Sonoma County juvenile court terminated his dependency case when C.W. was 16, awarding sole legal and physical custody to Rusty. While an appeal was pending, Louisiana authorities removed C.W., on an emergency basis, from Rusty’s custody, and sent C.W. to California. The court of appeal reversed, first noting that under the Uniform Child Custody Enforcement Act, California has continuing, exclusive jurisdiction over the permanent disposition of C.W.’s custody. The juvenile court abused its discretion. Rusty participated in barely any reunification services, engaged in no sexual abuse counseling, and lives far from local child welfare officials.

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Molinaro v. Molinaro

Docket: B282014(Second Appellate District)
Opinion Date: March 29, 2019
Judge: Egerton
Areas of Law: Family Law

Husband appealed a restraining order issued under the Domestic Violence Prevention Act (DVPA) commanding him, among other things, to stay at least 100 yards away from his wife and three children. The Court of Appeal held that the part of the restraining order prohibiting husband from posting anything about his divorce case on Facebook constituted an overbroad, invalid restraint on his freedom of speech. Accordingly, the court reversed that provision and directed the trial court to strike it from the restraining order. The court affirmed the restraining order in all other respects, holding that substantial evidence supported the trial court's abuse finding; husband forfeited his void for vagueness challenge to the DVPA; the restraining order properly included the adult daughter as a protected person; and the trial court properly ordered husband to participate in an anger management program as a restrained party under the DVPA.

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Wright v. County of San Mateo

Docket: A153687(First Appellate District)
Opinion Date: March 29, 2019
Judge: Pollack
Areas of Law: Real Estate & Property Law, Tax Law

Revenue and Taxation Code section 69.5, implementing 1986's Proposition 60, allows qualified homeowners over 55 years of age to transfer the property tax basis of their principal residence to a replacement dwelling of equal or lesser value in the same county, Cal. Const., art. XIII A 2(a). San Mateo County determined that plaintiffs, who are otherwise qualified under the statute, were not entitled to transfer the property tax basis from their

original home to a newly constructed replacement home because they formed a limited liability company (LLC) to purchase the land on which they installed the manufactured replacement home that they purchased. Plaintiffs sued; the trial court granted the county summary judgment. The court of appeal reversed. The plaintiffs, rather than the LLC, constructed the replacement home. They sold their original property and constructed a replacement property which, at the time of their claim, they owned and occupied as their primary residence. They are precisely the persons for whom the statute was intended to provide property tax relief. The fact that, to satisfy a bank requirement, they made temporary use of an LLC before taking title to their replacement property provides no justification under the terms of the statute or in logic or fairness for denying them relief.

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